

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA STATE	:	
CONFERENCE OF THE NAACP, <i>et al.</i> ,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	No. 1:22-cv-00339-SPB
v.	:	
	:	
AL SCHMIDT, <i>et al.</i> ,	:	
	:	
Defendants.	:	<b>ELECTRONICALLY FILED</b>
	:	

**DEFENDANT BERKS COUNTY BOARD OF ELECTIONS’ BRIEF IN  
OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Defendant Berks County Board of Elections (“Berks Board”), by its undersigned attorneys, joins in and incorporates by reference the brief in opposition to Plaintiffs’ motion for summary judgment filed by Lancaster County Board of Elections (“Lancaster Board”) (doc. 294). All of the arguments asserted by Lancaster Board apply equally to Berks Board.

For all the reasons stated in Lancaster Board’s brief in opposition to Plaintiffs’ motion for summary judgment, Plaintiffs’ motion should be denied, and the Court should grant summary judgment in favor of Berks Board and the other defendants.

Berks Board makes one additional argument in opposition to Plaintiffs’ motion for summary judgment and in support of Defendants’ motions for summary judgment.

The provision of the Election Code at issue involves a voter’s declaration, and the Pennsylvania Election Code requires the declaration to be both signed and dated. The voter’s declaration is returned to the voter’s county board of elections with the voter’s mail-in or absentee ballot.

How can a voter be held accountable for a false declaration stating, among other things, “I have not already voted in this election,” unless the voter’s declaration is both signed and dated?

It is not onerous or unusual to legally require a declarant to sign and date a declaration or affidavit stating certain facts are true. Indeed, 28 U.S.C. § 1746 is a federal law example of such a requirement. That federal statute allows provides that when any matter is required or permitted to be supported, evidenced, established, or proved by a sworn written declaration, verification, certificate, statement, oath or affidavit, an unsworn declaration, verification, certificate, statement, oath or affidavit may be provided instead, with like force and effect, to support, evidence, establish or prove the matter at issue, as long as the unsworn declaration is in a writing that is subscribed to be true under penalty of perjury, and dated, in a specified form (depending on whether it is executed within or without the United States, its territories, possessions, or commonwealths).

Regardless of where it is executed, both forms require the declarant to provide the date on which the declaration is executed:

(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)”.

*See* 28 U.S.C. § 1746.

**WHEREFORE**, the Court should deny Plaintiffs' motion for summary judgment, and the Court should instead grant summary judgment in favor of Berks Board and the other defendants.

Respectfully submitted,

Dated: May 5, 2023

**SMITH BUKOWSKI, LLC**

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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b) and LCvR 5.6, the undersigned hereby certifies that the foregoing document was electronically filed on the below date with the Court's CM/ECF system, which transmitted a Notice of Electronic Filing of the filed document on counsel of record and/or each party in the case who is registered as a Filing User.

Dated: May 5, 2023

**SMITH BUKOWSKI, LLC**

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